

Date: mailed 6/3/96

Case Nos.: 96-TSC-4

In the Matter of:

James Schooley
Complainant

v.

**Alyeska Pipeline Service Company and
Chugach North Technical Services**
Respondents

Appearances:

No Appearance
For Complainant

Samuel T. Perkins, Esq.
Robert E. Jordan, III, Esq.
For Respondents

Before: **DAVID W. DI NARDI**
Administrative Law Judge

RECOMMENDED ORDER DISMISSING APPEAL WITH PREJUDICE

This complaint was filed by Complainant under the Employee Protection Provisions of the Toxic Substances Control Act of 1976, 15 U.S.C. § 2622, the Water Pollution Control Act, 33 U.S.C. § 1367, the Solid Waste Disposal Act, 42 U.S.C. § 6971, and the Clean Air act, 42 U.S.C. § 7622, on August 22, 1995 with the Wage and Hour Division, U.S. Department of Labor, Seattle, Washington and Robert C. Backer, Assistant District Director, by letter dated October 17, 1995 (ALJ EX A), advised Complainant that his allegations could not be substantiated for the following reasons:

An investigation of your complaint revealed that Chugach North Technical Services operated as an employment agency for Alyeska Pipeline Service Company during the period covered by your August 22, 1995 complaint. It was not possible to identify any illegal practices engaged in by the firm. It is also apparent that Alyeska jobs serviced by the firm during

the period covered by your August 22, 1995 complaint are also included in the settlement with Alyeska Pipeline Service Company, Arctic Slope Inspection Services and Veco Engineering, Inc.

Complainant timely filed an appeal with the Office of Administrative Law Judges and the matter was assigned to this Administrative Law Judge for appropriate action on November 14, 1995. (ALJ EX B)

The parties were then **DIRECTED** to file, within sixty (60) days of receipt of an **ORDER** issued on November 17, 1995 (ALJ EX C), a status report on the procedural posture of this case, **i.e.**, whether Mr. Backer is correct in his statement "that Alyeska jobs serviced by the firm during the period covered by (Complainant's) August 22, 1995 complaint are also included in the settlement terms of (the) just approved whistle blower settlement with Alyeska Pipeline Service Company, Arctic Slope Inspection Services and Veco Engineering, Inc."

The parties were further advised, if Mr. Backer is correct, to file an appropriate document, signed by all necessary parties, attesting to such fact.

If not, the parties were directed to file appropriate pre-hearing exchanges and the matter would then be scheduled for hearing in Anchorage, Alaska

Alyeska Pipeline Service Company timely filed the following response (ALJ EX D):

"On November 17, 1995, the Administrative Law Judge issued an order directing the parties to file a status report in the above-captioned proceeding. The purpose of the status report was to address the issue of whether Richard C. Backer, Assistant District Director, Wage and Hour Division, U.S. Department of Labor, was correct in determining that "Alyeska jobs serviced by [Chugach North Technical Services] during the period covered by [complainant's] August 22, 1995 complaint are also included in the settlement terms of [the] just approved whistle blower settlement with Alyeska Pipeline Service Company, Arctic Slope Inspection Services and Veco Engineering, Inc." November 17, 1995 Order at 2. For the reasons set forth below, Alyeska believes there is no real doubt that any Alyeska jobs referred to in complainant James Schooley's complaint are covered by the settlement agreement to which Mr. Backer referred. There is, however, a difficulty in complying with the Court's directive that all parties sign and file an appropriate document attesting to the fact, and Alyeska respectfully suggests an alternative approach to reach the same goal.

"The settlement agreement to which Mr. Backer referred was submitted to Judge Di Nardi for approval with regard to Case Nos. 94-TSC-10 AND 95-TSC-12, and to Judge Lindeman for approval with regard to Case No. 95-TSC-13. Judges Di Nardi and Lindeman subsequently recommended approval of the settlement and on October 3, 1995, the Secretary of Labor issued a Final Order approving the settlement and dismissing those proceedings.

"Paragraph 9 of the settlement agreement recited Mr. Schooley's release of "any and all claims, demands or causes of action" against Alyeska and other respondents "whether known or unknown, and whether or not in litigation, which [Mr. Schooley] may have asserted or which could be asserted by another on his behalf, based on any action, omission, or event, that existed or occurred prior to the date of his execution of this Settlement Agreement." Mr. Schooley executed the settlement agreement on August 22, 1995. Because the complaint executed by Mr. Schooley that is now before Judge Di Nardi was also dated August 22, 1995, it follows that any Alyeska jobs that are the subject of that complaint are also covered by the release of claims quoted above. Further, by paragraph 5 of the settlement agreement, Mr. Schooley agreed that his employment with any of the respondents was "irrevocably terminated," and that "he will not at any time in the future submit a resume, or any form of application for employment to any respondent . . . , directly or through a third party." Thus, to the extent that Mr. Schooley's complaint might be seen as raising an issue with respect to Alyeska jobs open after August 22, 1995, the settlement agreement also covers those positions.

"On January 6, 1996, counsel for Alyeska sent a letter to Billie P. Garde, Mr. Schooley's counsel in the cases that are listed above, setting forth Alyeska's interpretation and requesting that she countersign the letter if she agreed with that interpretation. Ms. Garde has countersigned the letter, a copy of which is attached hereto.

"It is important to note, however, that Ms. Garde has informed counsel for Alyeska that she is not representing Mr. Schooley in this proceeding. Thus, while Alyeska understands that she has provided Mr. Schooley with a copy of the letter and informed him of her intention to sign it, she is not executing the letter in the capacity of current counsel for Mr. Schooley.

"Under the circumstances, Alyeska is reluctant to approach Mr. Schooley directly on this matter while he is either not represented by counsel, or represented by counsel who has not yet entered an appearance. Alyeska therefore respectfully requests that this Court enter an Order to Show Cause in order to afford Mr. Schooley, **pro se**, or by a new counsel, an opportunity to respond to the Order of November 17, 1995." (ALJ EX D)

On March 5, 1966 I issued an **ORDER TO SHOW CAUSE** wherein I stated as follows (ALJ EX E):

"The Respondent filed its status report on February 14, 1996 with the Docket Clerk of the Boston District and counsel for the Alyeska Pipeline Service Company, Attorney Robert E. Jordan, III, and Complainant's former counsel, Attorney Billie Pirner Garde, have rendered their opinion that Paragraph 9 of the settlement agreement intended to foreclose the present claim involved in the proceeding before me. However, as Attorney Garde does not represent Complainant in this matter and as no reply has yet been received from Complainant, the Complainant is hereby **DIRECTED TO SHOW CAUSE** and to file a report within twenty (20) days of receipt of this order as to his understanding on this open issue. In the event that Complainant retains the services of an attorney to advise him on this question, such attorney shall file a Notice of Appearance as soon as possible with our Docket Clerk, with copies to the interested parties."

As of this date, Complainant has not yet favored this Court with a response to any of the **ORDERS** issued by this Administrative Law Judge.

Accordingly, in view of the foregoing, I find and conclude that Complainant has abandoned his appeal of the October 17, 1995 RECOMMENDATION of Assistant District Director Robert C. Backer (ALJ EX A) and that a dismissal of the appeal is appropriate herein, pursuant to 29 C.F.R. §18.39(b).

Therefore, in view of Complainant's failure to respond, personally or through counsel, or to contact this Administrative Law Judge, it is **RECOMMENDED** that the appeal filed herein by Complainant shall be and the same hereby is **DISMISSED WITH PREJUDICE**, pursuant to 29 C.F.R. §18.39(b).

DAVID W. DI NARDI
Administrative Law Judge

Boston, Massachusetts

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